

REMARKS

I. Status of the Claims

Claim 1 has been amended to cancel the non-elected subject matter, *i.e.*, to recite at least 0.5% by weight of at least one ethanolamine derivative of formula I. Accordingly, claims 6 and 8 have been cancelled. Claims 1-3 and 7 are now pending. As the limitations added to claim 1 were previously presented in claim 6 and relates to the subject matter elected by Applicants in response to the election of species requirement set forth by the Examiner, the amendment to claim 1 does not raise new issues and presents the claims in better form for consideration on appeal. Accordingly, Applicants respectfully request entry of this Amendment.

II. Election of Species Requirement

The Examiner has maintained the Election of Species requirement, requiring Applicant to elect “the inclusion and type of electrolyte present in the claims.” Applicants continue to traverse this requirement. Nevertheless, in an effort to expedite prosecution, Applicants have cancelled the non-elected subject matter without prejudice or disclaimer for filing in a divisional/continuing application.

III. Claim Rejections – 35 U.S.C. § 112

The Examiner has rejected claim 6 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner argues that it is unclear if 0.5 wt.% total electrolytes must be present or 0.5 wt.% of electrolyte of formula I must be present. Applicants respectfully disagree. However, in an effort to expedite prosecution Applicants have defined the electrolyte as an ethanolamine derivative of formula I. Accordingly, it is clear that 0.5 wt.% of an ethanolamine derivative of formula I must be present. Accordingly, Applicants respectfully request withdrawal of this rejection.

IV. Claim Rejections – 35 U.S.C. § 103

A. The Rejection of Claims 1-3 and 6 under 35 U.S.C. § 103(a) In View of U.S. Published Patent Application No. US2003/0007985 (“Chevalier et al.”) and U.S. Patent No. 5,425,939 (“Guerrero et al.”).

The Examiner has rejected claims 1-3 and 6 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. US2003/0007985 (“Chevalier et al.”) in view of U.S. Patent No. 5,425,939 (“Guerrero et al.”). Applicants respectfully traverse this rejection.

As discussed in the Specification, Applicants have discovered that thickened compositions containing higher levels of ethanolamine derivatives, e.g., at least 0.5 wt.%, with acceptable stability and sufficiently long shelf life can surprisingly be obtained through the use of a combination of sclerotium gum and a copolymer selected from the group consisting of methyl vinyl ether/ maleic anhydride copolymer and acryloyldimethyltaurate vinylpyrrolidone. Accordingly, the present invention relates to a chemical composition comprising: (a) from 0.005 to 3 wt.% of sclerotium gum; (b) from 0.005 to 3 wt.% of a copolymer selected from the group consisting of methyl vinyl ether/ maleic anhydride copolymer and acryloyldimethyltaurate vinylpyrrolidone copolymer; (c) an aqueous carrier; and (d) at least 0.5 wt.% of at least one ethanolamine derivative of formula I, or a topically acceptable salt thereof, wherein the pH of the composition ranges from about 4.5 to about 8. The compound of formula I is as follows:



wherein R¹ and R² independently represent hydrogen, C₃₋₆ cycloalkyl or C₁₋₆ alkyl, optionally substituted with hydroxy, methoxy, oxo or formyl. None of the references relied upon by the Examiner, taken alone or in combination, teach or suggest the presently claimed thickened composition comprising at least 0.5 wt.% of an ethanolamine derivative.

The Examiner relies upon Chevalier et al. as disclosing compositions with an anti-wrinkle effect in a physiologically acceptable aqueous medium. Specifically, the Examiner

relies upon Example 2 as disclosing an anti-aging serum comprising 0.2% xanthan gum, 0.2% PVM/MA decadiene crosspolymer, water and 0.2% triethanolamine. There is no teaching or suggestion of the incorporation of at least 0.5% of an ethanolamine derivative. Further, there is no teaching or suggestion of the incorporation of sclerotium gum.

Recognizing that Chevalier et al. does not teach or suggest the inclusion of sclerotium gum, the Examiner relies upon Guerrero et al. The Examiner argues that because Guerrero et al. teaches that the use of sclerotium gum in combination with a hydrophobically-modified (meth)acrylate polymer forms an effective thickening system for cosmetic compositions it would have been obvious to one of ordinary skill in the art to incorporate the 2-part thickening system of sclerotium gum and hydrophobically-modified (meth)acrylate polymer to the anti-aging composition of Chevalier et al. to be used as a thickener in addition to one of the suggested gelling agents, lipophilic gelling agent PVM/MA. Applicants respectfully disagree.

As noted by the Examiner, Guerrero et al. teaches that many thickeners are known but not all thickening agents are equally effective for any particular type of formulation. See col. 1, lines 21-24. There is absolutely no teaching or suggestion in Guerrero et al. that the two part thickening composition of Guerrero et al. could be used in combination with the gelling agents taught by Chevalier et al., much less the specific lipophilic gelling agent PVM/MA. In fact, in light of the specific discussion in Guerrero et al. that “not all thickening agents are equally effective for any particular type of formulation” one of ordinary skill in the art would not expect that the incorporation of the two part thickening system of Guerrero et al. would be successful in the particular compositions taught by Chevalier et al. Further, Guerrero et al. fails to remedy the deficiencies of Chevalier et al. in that there is no teaching or suggestion to increase the amount of triethanolamine to at least 0.5 wt.%. The Examiner interpreted previously presented claim 6 as not requiring 0.5 wt.%. However, Applicants point out that in response to the election of species requirement set forth by the Examiner, Applicants elected the ethanolamine derivative as the electrolyte. Accordingly, the Examiner should have interpreted the claims as including at least 0.5 wt.% of ethanolamine derivative. Further, Applicants have amended claim 1 so that it is drawn to the elected species and clearly recites that the composition comprises at least 0.5 wt.% of an ethanolamine derivative. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness and the rejection should be withdrawn.

B. *The Rejection of Claims 1-3 and 6-8 under 35 U.S.C. § 103(a) In View of U.S. Published Patent Application No. US2003/0007985 (“Chevalier et al.”), U.S. Patent No. 5,425,939 (“Guerrero et al.”) U.S. Patent No. 5,554,647 (“Perricone”) and U.S. Patent No. 5,441,740 (“Ozlen”).*

The Examiner has rejected claims 1-3 and 6-8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. US2003/0007985 (“Chevalier et al.”) and U.S. Patent No. 5,425,939 (“Guerrero et al.”) as applied to claims 1-6 and 10 and further in view of U.S. Patent No. 5,554,647 (“Perricone”) and U.S. Patent No. 5,441,740 (“Ozlen”).

Applicants respectfully traverse this rejection at least for the reasons discussed above. Perricone and Ozlen, taken alone or in combination, fail to remedy the deficiencies of Chevalier et al. and Guerrero et al. discussed above. Specifically, there is no teaching or suggestion to increase the amount of triethanolamine to at least 0.5 wt.% nor is there any teaching or suggestion to incorporate sclerotium gum into the Chevalier et al. anti-aging serum. Accordingly, as the Examiner has failed to establish a *prima facie* case of obviousness, the rejection should be withdrawn.

V. Conclusion

For the reasons set forth above, Applicants respectfully request withdrawal of all outstanding objections and rejections. If the Examiner feels that a discussion with Applicants’ representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants’ representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/J&J5133USNP/JPB. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account No. 10-0750/J&J5133USNP/JPB.

Respectfully submitted,

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